

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

May 11, 2004

Chairman S. Schiller called the meeting to order at 4:02 p.m., and roll was taken.

MEMBERS PRESENT: S. Schiller, R. Hilt, E. Fordham, J. Clingman-Scott, R. Schweifler, B. Larson

MEMBERS ABSENT: C. Kufta

STAFF PRESENT: B. Lazor, H. Griffith

OTHERS PRESENT: J. & S. Leloff, 1461 Kingsley; M. Faino, 859 Fleming; W. Griffin, Community & Neighborhood Services (CNS); B. Spaniola, 1962 Harrison; B. Mazade, City Manager.

APPROVAL OF MINUTES

A motion to approve the regular meeting minutes of April 13, 2004, was made by J. Clingman-Scott, supported by R. Hilt and unanimously approved.

OLD BUSINESS

Hearing, Case 2004-08: Variance request to allow a billboard to be placed at the rear of the building located at 1812 Lakeshore drive, by Richard McEwen (tabled). The applicant has withdrawn this request.

PUBLIC HEARINGS

Hearing, Case 2004-13: Variance request to allow a six foot fence to be placed in front of the front building line at 1461 Kingsley, by Jane and Steve Leloff. B. Lazor presented the staff report. The subject property is located at the intersection of Kampenga and Kingsley. The property is one block away from Getty Street. There are residential uses around the property and commercial uses as well. The applicant has stated that there is a bar across the street which is one reason why a privacy fence was desired. There is an alley directly to the west of the property. The property is surrounded on three sides by public access ways. The ordinance states--- Existing Screening: Any fence, screen, wall or hedge which does not conform to the provisions of this Section and which legally existed at the effective date of this Ordinance may be continued and maintained, provided there is no physical change other than necessary maintenance and repair in such fence, screen, wall, or hedge except as permitted in other sections of this ordinance. The fence has been in place for two years. The previous fence was a non-conforming 6 foot high chain link fence. The new fence is a privacy style 6 foot shadow box fence. The zoning ordinance does not allow for new fencing of this height to be constructed in front of the front building line. Since this is a corner property, there are two front building lines. Staff has received the following public comments: 1) Janet of 1484 Kingsley, she had questions. She thought that they were trying to put the fence on her property. Once she found out where the home was, she was okay with the request. 2) The owner of 865 Irwin felt that everyone should conform to the ordinance. He was against the request. 3) Joyce of 1481 Kingsley was in favor of the request. 4) Russell & Barb Young of 886 Kampenga sent a letter in. They were in favor of the request.

M. Faino stated that the fence looks nice in the back. He felt that there should be a stop sign in the place of the Yield sign if this is approved. He had thought that the fence wasn't completed yet. Once corner lots and 2 front setbacks was explained to him as well as the fence was already completed; he was okay with the request.

A motion to close the public hearing was made by R. Schweifler, supported by B. Larson and unanimously approved.

R. Hilt stated that he would normally be opposed to this type of request. He understands the need for the fence. He would be inclined to support the request. B. Larson would also support the request. R. Schweifler agreed with R. Hilt. E. Fordham stated that it was obvious this home fronts on 1 street. It would be in the best interest of the homeowner to shield their property from the store. He would also support the request.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because there is a liquor store adjacent to the property. The patrons of the store ask for money, bottles, and talk to the children that are playing in the back yard. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because they live on a corner lot, which has stricter rules in regards to placement of a fence. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because this would also help block the view of the store from other people in the neighborhood. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the liquor store was there. The ordinance can't make an existing business conform to screening from neighboring properties, so the owner of the residence would like to do it. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because there is no financial gain. There is an expense when it comes to a fence. They also own a large dog that would be able to jump over the allowable size fence. The requested variance is the minimum action required to eliminate the difficulty because then they would be able to utilize their backyard easier without the patrons of the store disturbing them.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow 6 foot fence in front of the front building line at 1461 Kingsley, be approved, based on the findings of fact, with the following conditions attached: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by R. Schweifler, supported by B. Larson and unanimously approved.

Hearing, Case 2004-14: Variance request to reduce the front setback to 15 feet and the rear setback to 11 feet for proposed duplex (facing Wood) at 407 Catherine, City of Muskegon (CNS). B. Lazor presented the staff report. This property was the former Briggs Dairy building which was constructed approximately 70 years ago. The building has been vacant for several decades and has been deteriorating and has been recently torn down. Currently the property is vacant and nearing being ready for a construction project. The property is on the corner of Wood and Catherine, directly across from what appears to be an abandoned gas station. The current owner of the property is the State of Michigan. The applicant is in negotiations with the State about the purchase of the property. The applicant has purchased, renovated, and constructed numerous houses all around the city, creating a more livable community. The property is zoned for the proposed duplex. The applicant wishes to face the building onto Wood Street because he says it will make a greater impact to the neighborhood. The proposed building is 40' wide by

45' long. It is two stories tall and features garages and variable pitches and elevations to the façade. It is a Craftsman style house that will fit into the neighborhood. Wood is a collector street which requires a setback of 25 feet. If wood were considered a minor street, the setback would only be 15 feet. Most rear residential setbacks are 30 feet. The reason for this is so that the dwellers will have back yard to use. The applicant is asking for a variance to only have a small back yard. However, the way the house is proposed to be laid out will offer two generous sized side yards for the dwellers of the building. Staff has not received any public comments

E. Fordham asked if the proposed home would be like the submitted drawings that were supplied to the commission members. W. Griffin stated that it would. CNS is hoping to spur the development in the area. They have a couple of other homes that are also being done in this area. He explained that history of the building that had been there. He had a structural engineer go in and see if there was anyway to rehabilitate the structure and he was informed that it would be too costly. E. Fordham asked if the house across the street from this was owned by them. W. Griffin stated that it wasn't. H. Griffith stated that she had spoken to a lady that was interested in that home, but she didn't want to put a bid on it if a convenient store could be located at 407 Catherine. Once the customer was informed of the possibility that a duplex may be going there, she stated that she would be putting a bid in. R. Schweifler asked what the dairy had for a setback. W. Griffin stated that he wasn't sure. He knows that it was pretty close to the property line.

A motion to close the public meeting was made by R. Hilt, supported by R. Schweifler and unanimously approved.

R. Schweifler stated that this was a great project and the proposed setback would be farther from Wood St. than the dairy had. R. Hilt stated that there wouldn't be much of a backyard, but the size of the side yards would make up for it.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because there are other structures in the area facing Wood St. The previous structure faced Catherine and was a commercial use. That such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the ability to face Wood St., in order to complete the project as designed and to make a significant impact in the neighborhood improvement area, would be in the best interest of the community. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because it would improve the aesthetic appearance and functionality of the area. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the previous structure was built prior to the ordinance so the current requirements didn't exist. In order to redevelop the project as proposed, the reduction in the setbacks are necessary. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the reason for the request is to make a significant impact on an area with a significant amount of mixed use and needs. The requested variance is the minimum action required to eliminate the difficulty because the proposed duplex, wouldn't be able to be built on the property without the setback being granted.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the front setback to 15 feet (Wood St. setback) and to reduce the rear setback to 11 feet at 407 Catherine, be approved, based on the findings of fact, with the following conditions attached: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the

property must be complete within one year or the variance is void, was made by R. Hilt, supported by E. Fordham and unanimously approved.

Hearing, Case 2004-15: Variance request to reduce the rear setback to 7' for a proposed deck at 1962 Harrison, by Bill Spaniola. B. Lazor presented the staff report. The property is located on the corner of Harrison and Mann Street. The lot is small with only 3,234 square feet of property. The house sits near the middle of the property and overlooks a parking lot. The property is next door to the property that had received a variance for a similar situation with a deck. The property overlooks the parking area for the Booker Institute of Cosmetology and contains a residence. The deck is proposed to be more than two feet off the ground. When there is a deck of this height, it is required to meet the setbacks of the principal structure (house), 30 feet. The property has quite a steep drop-off to the rear. From the Harrison Ave. side the main floor is at street level. From the rear, it actually is more of a 2nd story since there is a walk-out basement which opens up at ground level at the bottom of the slope. Staff received the following comments: 1) Steve Warmington of 1938 Lakeshore Drive (Marine Tap Room) is in favor of the request. 2) Joe Booker, Booker Cosmetology, who was okay with the request. 3) and email from Bruce Stanton of 207 Fulton (agent for 1916 & 1924 Harrison) who is in favor of the request. 4) Valerie of 1989 Harrison who had no problem with the request.

J. Clingman-Scott asked if there was an entrance to the basement from the outside. B. Spaniola stated that there is a door. R. Schweifler asked if this deck would be the same size as the neighbor's who had received a variance. B. Spaniola stated that he believed that they were pretty equal. J. Clingman-Scott asked if the deck would closely match the neighbor's deck. B. Spaniola stated that the proposed deck is 10' X 20'. He showed the commission members with a picture of what he would like the deck to look like.

A motion to close the public hearing was made by R. Hilt, supported by B. Larson and unanimously approved.

R. Hilt stated that he was opposed to the neighbor's request for the variance for their deck, but since that request was approved, he didn't feel that this should be denied. R. Schweifler stated that he had supported the neighbor's request and he supports this one as well. He felt the proposed design was attractive and would be a good use for that area of the property.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the property is on a non-complying lot. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the neighbor to the immediate west has a deck similar to the one he would like to build. They were also granted a variance for their deck. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the only adjacent property owner is the neighbor to the west who has the same type of deck. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the lot is a non-complying lot. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the proposed deck would be used for their enjoyment and not necessarily to make the property more valuable. The requested variance is the minimum action required to eliminate the difficulty because they would be allowed to utilize the area of the property behind the home better.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the rear setback to 7' for a proposed deck at 1962 Harrison, be approved, based on the findings of fact, with the following conditions attached: 1) The variance is limited to the deck. 2) The variance is recorded with the deed to keep record of it in the future. 3) That the addition to the property must be complete within one year or the variance is void, was made by R. Schweifler, supported by J. Clingman-Scott and unanimously approved.

Hearing, Case 2004-17: Variance request to allow a lot with a length that is more than three (3) times its width to be created at 1570 5th Street, City of Muskegon (Planning). B. Lazor presented the staff report. This property is 40' X 55'. The property is located near the intersection of Southern Avenue and 5th Street, just south of the High School. The house takes up a good portion of the property. The house has a small backyard. The City is aggressively involved in selling off the vacant lots that it owns. These lots are an enormous financial and maintenance challenge for the city. The City owns two lots behind this property (151 and 159 W. Southern). The city undertook a lot swap with Muskegon Public Schools to obtain 151 West southern. It is the recommendation of the Land Re-utilization committee that the lot be sold to the adjacent property owner. The property owner to the north of 1570 5th street has a wider lot so the 3 times longer than its width rule does not affect them. Since 1570 5th Street is narrow, the rule applies. If the ZBA is inclined to grant the variance, the city will be able to sell the two lots (151 & 159 W. Southern) to the property owners at 1570 & 1562 5th street. This sale will create a buildable lot for 1562 5th and give 1570 a large backyard. The selling of the lots will also put the lots into the hands of private citizens (subject to City Commission approval of the sale). The city would no longer have to maintain the lots. The lots will also be added back to the tax roles which benefits the entire city. Staff received the following comments: 1) Tom Harryman of 1527 5th street called to say that this was a great idea. 2) Nick and Susan Kroes of 1563 Jefferson wrote an email stating that they are delighted that the house on Fifth will be able to enlarge their yard. They hope the house on the corner of Southern and Fifth will do the same. 3) A letter from Rebecca Hamil of 1569 Fifth, who supported the request.

R. Hilt asked what would happen if 1 of the property owners were to back out of the purchase. B. Lazor stated that both of the property owners have paid their money for the property. Should this be approved, then they would be sent a letter because they each have a water bill that needs to be paid. Once the water bills are paid, then it would go before City Commission for approval of the sale. R. Hilt still had some concerns regarding 1 of them backing out of the sale. H. Griffith stated that if that were to happen, then the City would still own the property. B. Lazor stated that both parties would have to purchase the property in order for the sale to be completed.

A motion to close the public hearing was made by R. Schweifler, supported by R. Hilt and unanimously approved.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the lot is slightly narrower than the other lots in the immediate vicinity. The depth of this lot is only 55' whereas other surrounding lots are roughly 150' deep. The intention of this section of the ordinance was to prevent flag lots. By granting this variance, a flag lot wouldn't be created. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the neighbors have backyards. This home has little to no backyard. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because this would allow 2 city owned lots to be sold and put back into the hands of private citizens. The citizens would then be responsible for the maintenance, cleaning, and taxes. This would benefit the neighborhood, the property owners (giving each of them more property), as well as the City. The alleged

difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the intention of the ordinance was to prevent flag lots. The ordinance defines flag lots as a lot whose access to the public street is by a narrow private right-of-way, that is either a part of the lot or an easement across another property and does not meet the frontage requirements of the district in which it is located. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because this would help 2 property owners obtain back yards. The requested variance is the minimum action required to eliminate the difficulty because this would help each of them get a more conforming lot as each of the property owners currently have unbuildable lots.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a lot with a length that is more than (3) times greater than its width to be created at 1570 5th Street, be approved, based on the findings of fact, with the following conditions: 1) Contingent on the approval by the City Commission to sell the properties. 2) The variance is recorded with the deed to keep record of it in the future. 3) That the addition to the property must be complete within one year or the variance is void, was made by R. Schweifler, supported by J. Clingman-Scott and unanimously approved.

OTHER BUSINESS

Joint meeting of the ZBA and City Commission – S. Schiller stated that the City Commission would like to have a meeting with the ZBA commission members. There are some new proposed dates for this meeting. The meeting would be held in City Hall at 5:30 p.m. He asked the commission members if any of them had a problem with May 18th. There were a couple of members that wouldn't be able to attend that date. He asked about June 2nd. The consensus was that they could all make that date. It was decided that they would meet with the City Commission on June 2nd.

Van's Car Wash Signs – S. Schiller stated that he had met with B. Mazade. He was informed that the original sign was on a permanent base. Since the sign ordinance had changed since they had heard the variance request, the sign can remain under the new ordinance. B. Lazor read the language of nonconforming signs to the commission members. S. Schiller felt that the ZBA wasn't supported in the conditions that were placed on the variance request. B. Larson gave an example of his wife's business where the new sign ordinance would help. S. Schiller stated that the example is different than the situation of Van's Car Wash. R. Hilt explained the situation. This site has too many signs. J. Clingman-Scott suggested having this looked into and see if all the signs do in fact, comply with the ordinance. S. Schiller asked staff to do this.

955 W. Laketon – B. Larson stated that the majority of the commission didn't understand why the variance wasn't granted. S. Schiller asked about the City Commission's goal in fighting blight. He gave an example of downzoning so there would be fewer multi-family homes. B. Larson stated that was correct. E. Fordham asked if there would be a problem with this since some of the board members had changed since the requests for the variance were made. S. Schiller stated that it wouldn't. R. Schweifler stated that this was one of the tougher requests. Originally he wasn't in support of the request, but he did support the concept. He would be inclined to look at the request again. He feels that a multi-family home would be better for this area than a business.

A motion to not rehear the variance request for 955 W. Laketon, was made by J. Clingman-Scott, supported by R. Hilt and the vote was split with E. Fordham, R. Schweifler, and B. Larson voting nay.

S. Schiller stated that this could be placed on the next agenda when C. Kufta is there to vote also.

There being no further business, the meeting was adjourned at 5:00 p.m.